to Jim's hard work, and the publicity given the program by KTRK–TV, 7,000 young boys and girls signed up—making the program the most successful such effort in the country.

I am a dyed-in-the-wool Texan—whose great grandfather fought for Texas, and the Confederacy, in the War Between the States. Having said that, I want to add that Jim Masucci is the kind of Yankee that we Texans respect, admire and love—even if he does talk funny.

Mr. Speaker, I hope you will join with me in wishing Jim—and his lovely wife, Diane—the very best in the years ahead. We thank Jim for his work at KTRK–TV, as well as his long and distinguished record of community service. I know that even in retirement, Jim is the type of individual who will remain active, making a difference for many, many Houstonians.

MERGER MANIA

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 17, 1996

Mr. DUNCAN. Mr. Speaker, the U.S. Government should not be paying millions in taxpayers' funds to help defray the costs of corporate mergers in the defense industry. I would like to call to the attention of my colleagues and other readers of the RECORD the following article from the Brookings Review:

[From the Brookings Review, Summer 1996]

MERGER MANIA

(By Lawrence J. Korb)

McDonnell Douglas, Martin Marietta, Ling-Temco-Vaught (LTV). As the telltale compound names signal, mergers and acquisitions have long been a staple of the U.S. defense industry. But since the Clinton administration took office in 1992, the number of mergers has increased dramatically.

In 1991, military mergers were valued at some $300 million. By 1993, the value had climbed to $14.2 billion. It will top $20 billion in 1996. In 1993 Martin Marietta purchased General Electric's defense division and General Dynamics' space division. At about the same time Lockheed purchased General Dynamics' aircraft division, while Loral purchased LTV, Ford Aerospace, and Unisys. Then in 1994 Lockheed merged with Martin to become Lockheed Martin, and a year later Lockheed Martin purchased Loral to produce a $30 billion giant known as Lockheed Martin Loral, which now controls 40 percent of the Pentagon's procurement budget.

During this same period, Northrop outbid Martin for the Grumman aircraft company, and the new company in turn bought the defense division of Westinghouse. On a somewhat smaller scale, Hughes bought General Dynamics' missile division and Raytheon purchase E-Systems. Among the true defense giants, only McDonnell Douglas has not yet made a major purchase.

Spokesmen for the defense industry cite two reasons for this sudden rush of mergers. First, merger mania is sweeping U.S. industry generally. Second, with the end of the Cold War, defense spending has fallen so dramatically that excess capacity in the defense industry can be eliminated only through consolidation. As Norman Augustine of Lockheed Martin has observed, for the defense industry this is 1929.

Superficially these reasons seem quite plausible. Merger mania has certainly hit many areas of American industry, such as banking and communications. In 1992 Chemical Bank merged with Manufacturers Hanover, and in 1995 they combined with Chase Manhattan to form a single company. In the past year, Time, which had merged with Warner Communications in 1990, purchased Turner Broadcasting; Capital Cities/ABC merged with Pacific Telesis; and Bell Atlantic merged with NYNEX.

And defense spending has indeed fallen since the end of the Cold War. In current dollars, projected defense spending for fiscal year 1997 is about 40 percent below that of a decade ago, and procurement spending is about one-third what it was at its peak in the 1980s.

But what industry spokesmen fail to note is that the decline in defense expenditures has been greatly exaggerated and that, unlike the private-sector restructuring, the government is subsidizing defense mergers.

Remember the $600 toilet seats and the $500 hammers that had taxpayers up in arms during the mid-1980s? Today's subsidized mergers are going to make them look like bargains. The outrageously priced toilet seats and hammers were the result of defense companies taking advantage of a loophole in acquisition regulations. This time, the taxpayers are being fleeced at the hands of the Pentagon's civilian leadership, whose secret reinterpretation of the regulations has rained hundreds of millions of dollars upon the defense industry. To date the Pentagon has received 30 requests for reimbursement for restructuring. Lockheed Martin alone expects to receive at least $1 billion to complete its merger.

HOW DID IT HAPPEN?

In July 1993, John M. Deutch, then the undersecretary of defense for acquisition, responded to pressure on his boss, William Perry, from the chief executive officers of Martin Marietta, Lockheed, Loral, and Hughes by deciding to allow defense companies to bill the Pentagon for the costs of mergers and acquisitions. According to Deutch, who has since been promoted to deputy secretary of defense and then to director of Central Intelligence, the move was not a policy change but a clarification of existing policy. In Deutch's view, not only was the clarification necessary to promote the rational downsizing of the defense industry, it would also save taxpayers billions in the long run.

Deutch is wrong on all three counts. This is a major policy change. It is not necessary. And it will not save money.

A commonsense reading of the Federal Acquisition Regulations (FAR) would lead a reasonable person to conclude that organization costs are not allowable. The regulations state that since the government is not concerned with the form of the contractor's organization, such expenditures are not necessary for or allowable to government contracts. Indeed, during the Bush administration, the Defense Contract Management Agency (DCMA) rejected a request by the Hughes Aircraft Corporation to be reimbursed for $112 million in costs resulting from its acquisition of General Dynamics' missile division. As far back as the Nixon administration, during the post-Vietnam drawdown of defense spending, which was as severe as the current drawdown, the Defense Department rejected a similar request from General Dynamics.

But on July 21, 1993, Deutch wrote a memorandum stating that restructuring costs are indeed allowable and thus reimbursable under federal procurement law. Because Deutch regarded the memo as merely a clarification of existing policy, he saw no need for a public announcement. Indeed, he did not discuss his ''clarification'' with the military services or Congress or even inform them of it. Congress found out about it accidentally nine months after the memo was written when Martin Marietta tried to recoup from the Pentagon about $60 million of the $208 million it paid for General Dynamics' space division. A somewhat astonished Senator Sam Nunn (D-GA), then chairman of the Senate Armed Services Committee, remarked, ''Why pay Martin Marietta [60] million?''

Deutch's position that he was merely clarifying rather than making policy is not supported by anyone, even those who favor the change. The procurement experts in his own department disagreed vehemently. On June 17, 1993, the career professionals at DCMA told him that the history of the FAR argues against making the nonrecurring organization costs associated with restructuring costs allowable and noted that they had disallowed these costs in the past.

The DCMA position was also supported by Don Yockey, the undersecretary of defense for acquisition in the Bush administration; the Aerospace Industries Association (AIA), the trade association for aerospace companies; the American Bar Association's Section on Public Contract Law; and the American Law Division of the Congressional Research Service.

Yockey, who was Deutch's immediate predecessor as procurement czar and who is both a retired military officer and former defense industry executive, argued in a July 13, 1994, letter to the professional staff of the House Armed Services Committee that by definition, structure means organization, and that the FAR does not allow the reimbursement of organization costs. Indeed, it was Yockey himself who told DCMA to reject Hughes' request for reimbursement for its purchase of General Dynamics' missile division.

In a September 28, 1993, letter to Eleanor Spector, the director of defense procurement, Leroy Haugh, vice president of procurement and finance of AIA, stated that the Deutch memo constituted a significant policy decision and an important policy change. Therefore, Haugh asked Spector to promptly publish notice of this policy change in the Federal Register and to consider amending the regulations. In a May 3, 1994, letter to Deutch, Donald J. Kinlin, the chair of the ABA Section on Public Contract law, urged Deutch to modify the FAR since at the time it did not reflect the changes made in Deutch's July 1993 memorandum. What is significant about the AIA and ABA positions is that both groups support Deutch's change.

Finally in a June 8, 1994, memorandum John R. Luckey, legislative attorney for the Congressional Research Service, stated that while former amendment of the FAR could make restructuring costs allowable, the argument that they are allowable under the current regulations appears to contradict their plain meaning. In Luckey's opinion, Deutch's position is based on semantics, not legality.

In short, the political leadership of the Clinton defense department made a significant policy change that as a minimum should have been published in the Federal Register and, as Secretary Perry later admitted, cleared in advance with Congress.

THE SUBSTANCE OF THE ISSUE

This end run around the administrative and legislative processes by the Pentagon is unprecedented, but even more important is whether the Defense Department and the taxpayers should be giving the defense industry a windfall by allowing a write-off of substantial parts of restructuring costs. For four reasons, the answer to that question should be an emphatic ''No.''

First, like Mark Twain's death, the decline of the defense industry in this country has been greatly exaggerated. As Pentagon and industry officials endlessly point out, defense spending in general, and procurement spending in particular, have declined over the past decade. They note that between fiscal year 1985 and fiscal year 1995, the defense budget declined 30 percent in real terms and procurement spending fell 60 percent. But that comparison ignores the fact that between fiscal year 1980 and fiscal year 1985, the defense budget grew 55 percent and the procurement budget grew a whopping 116 percent. Defense spending in real terms is still at about its Cold War average, and the defense budget for fiscal year 1996 was higher than it was for fiscal year 1980. In inflation-adjusted dollars, Bill Clinton spent about $30 billion more on defense in 1995 than Richard Nixon did in 1975 to confront Soviet Communist expansionism. Using fiscal year 1985, the height of the Reagan buildup, as a base year distorts the picture. It would be like comparing spending in the Korean and Vietnam wars to the level of World War II and concluding we did not spend enough in Korea and Vietnam. Moreover, procurement spending will rise 40 percent over the next five years, and the Pentagon is now soliciting bids for the $750 billion joint strike fighter program.

Similarly, while defense employment has fallen 25 percent over the past eight years, it grew 30 percent in the five years before that. More people work in the defense sector now than at any time in the decade of the 1970s. Moreover, much of the decline in the defense industry is attributable to the reengineering or slimming down that is sweeping all American industries, even those with an increasing customer base.

Finally, if one adds the $266 billion worth of U.S. arms sold around the world since 1990 (a scandal in itself) to the $300 billion in purchases by the Defense Department, American defense industry sales are still at historic highs. Defense is still a profitable business—which explains why defense stocks are still quite high despite the jeremiads of industry spokesmen. Over the past year Lockheed Martin stock has increased 48 percent in value. Northrop Grumman is up 50 percent and McDonnell Douglas a whopping 80 percent.

Second, taxpayer subsidization is no more necessary today to promote acquisitions and mergers than it has even been. Just about every major defense company today is the product of a merger, some of them decades old. For example, General Dynamics acquired Chrysler's tank division in the early 1980s, and McDonnell acquired the Douglas Aircraft Company in the late 1960s. Even today in the supposed ''bull market,'' plenty of bidders vie for the available companies. Three years ago, several companies engaged in a fierce bidding war for LTV. And Northrop outbid Martin Marietta for Grumman. It is hard to believe that if taxpayer subsidies were not available, companies would not buy available assets if it made good business sense. If they paid a little less for their acquisitions, the taxpayers rather than the stockholders would benefit. In the bidding war for Grumman, both Martin and Northrop offered significantly more than market value, thus giving Grumman's shareholders a financial bonanza of $22 a share (a bonus of nearly 40 percent). Raytheon paid a share (a bonus of nearly 40 percent). Raytheon paid a similar premium to acquire E-Systems in April 1995. Should the government allow Northrop's and Raytheon's stockholders to reap a similar bonanza by subsidizing those sales?

Over the past five years, William Anders, the former CEO of General Dynamics, made himself and his stockholders a fortune by selling parts of his company to Hughes, Martin, and Lockheed. Since 1991 General Dynamics' stock increased 550 percent and the company has stashed away $1 billion. Should we also help the stockholders and executives of the buying companies? Did defense companies offer the taxpayers a rebate during the boom years of the 1980s when their profits reached unprecedented levels?

Third, the Defense Department has no business encouraging or shaping the restructuring of defense industry, or as Deutch puts it, ''promoting the rational downsizing of the defense industry.'' Who is to determine what is rational? A government bureaucrat or the market? While government shouldn't discourage restructuring, it should stay at arm's length. If the deal does not make good business sense, the company will not proceed, as Martin did not when the price for Grumman became too high. Moreover, might not these mergers create megacompanies that will reduce competition and may be very difficult for the political system to control? The Lockheed Martin Loral giant, for example, is larger than the Marine Corps. With facilities in nearly every state and 200,000 people on its payroll, its political clout is enormous. And it presents problems over and above its sheer size. For example, Loral sells high-tech components to McDonnell Douglas for its plane, which is competing with Lockheed Martin for the $750 billion joint strike fighter program. How can Loral be a partner in promoting the McDonnell Douglas plane against the Lockheed Martin entry?

Fourth, past history indicates that these mergers end up costing rather than saving the government money. Both the General Accounting Office and the Department of Defense Inspector General have found no evidence to support contentions by Deutch and defense industry officials that previous mergers had saved the government money. Indeed, on May 24, 1994, the Inspector General found that the claim of Hughes Aircraft that its 1992 purchase of General Dynamics missile division saved the Pentagon $600 million was unverifiable. Moreover, under the Deutch clarification, contractors can be reimbursed now for savings that are only projected to occur in the distant future. And if these savings do not occur as projected, how will the Pentagon get its (our) money back?

BRING BACK THE MERGER WATCHDOGS

Mergers always have been and always will be a feature of the U.S. defense industry. And the government has a role in those mergers. But that role—as exemplified by the successful 1992 Bush administration challenge of Alliant Techsystem's proposed acquisition of Olin Corporation's ammunition division—is to ensure that they preserve sufficient competition to enable the Pentagon to get the best price for the taxpayer. It is definitely not to increase company profits and limit competition by subsidizing the merger. Not only should the Defense Department abolish the new merger subsidy, it should follow the lead of its predecessors and scrutinize the anticompetitive aspects of all future mergers.

PLANNING FUTURE DEFENSE

(By Thomas L. McNaugher)

Quietly a new defense debate is taking shape, prompted by widespread recognition that the stable budgets Republicans and Democrats have promised the Defense Department cannot keep current forces ready to fight while financing a major round of weapons buying to replace the services' aging arsenal.

The problem here has been called the ''defense train wreck,'' because it involves the impending collision of two categories of defense spending. One train, already racing down the track, is high spending on current readiness, enough to keep U.S. forces prepared for two nearly-simultaneous ''major regional contingencies,'' as outlined in the 1993 ''Bottom Up Review'' (BUR) of U.S. force requirements that still governs Pentagon planning. The other train, looming on the horizon, is a surge in spending on new weapons. We have been able to forgo such spending for nearly a decade because Reagan-era defense investments left military inventories flush with new hardware. But those weapons are getting old and need to be replaced or improved. Barring an unexpected increase, the defense budget cannot afford both readiness and weaponry. Something has to give.

Although this debate probably won't pick up until after this fall's elections, early positioning in the debate suggests that U.S. forces may get smaller to accommodate more weapons procurement. Indeed, Secretary of Defense William Perry has said as much recently, although he appears to have only modest force cuts in mind. Senator John McCain (R–AZ), a prominent congressional voice on defense, would go much further. In a recent letter to his colleagues, McCain lamented ''the alarming practice of postponing essential modernization programs'' and suggested that the nation plan to meet just one major contingency while aggressively modernizing its weaponry to produce high-tech forces able to deliver firepower from long range with minimal ground force commitment.

Whether or not this is the right answer, it's the wrong way to frame the issues. Visualizing procurement spending as a co-equal ''train'' in this collision amounts to treating the future as if we knew it. Procurement spending amounts to long-range planning, after all, since it buys weapons that won't even enter our force posture, in some cases, for a decade or more. At a time when Pentagon briefings routinely begin with the adage that ''the only constant today is change,'' one is justified in asking why we are committing so much money to new weapons that will be with us for decades to come.

The answer lies less in a vision of the future than in habits and commitments linked to the past. We got used to treating the future like an advanced version of the present during the Cold War, when Soviet forces provided a well-understood, slowly advancing focal point for long-range planning. We are still doing that, even in the absence of any firm vision of the future. Even the discussion of current readiness bears witness to Cold War concepts of risk that no longer capture the realities of what our forces are doing.

This is not meant as criticism. The BUR has served admirably to maintain U.S.

HONORING FATHER THOMAS J. MURPHY, S.J.

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 17, 1996

Mr. ENGEL. Mr. Speaker, Father Thomas J. Murphy, S.J., has served for more than 20 years in St. Margaret's Parish in Riverdale, in New York City, where he is known for all the good work he has performed for the community. This includes his activities with the Northwest Bronx Community and Clergy Coalition and his longtime chaplaincy for the Pro Patria Council of the Knights of Columbus.

Besides his numerous and productive efforts with the parish, which include his leadership in